

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 127

SENATE BILL 1059

AN ACT

AMENDING SECTIONS 13-1501 AND 13-1805, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 18, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1819; RELATING TO THEFT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-1501, Arizona Revised Statutes, is amended to
3 read:

4 13-1501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Critical public service facility" means:

7 (a) A structure or fenced yard that is posted with signage indicating
8 it is a felony to trespass or signage indicating high voltage or high
9 pressure and is used by a rail, bus, air or other mass transit provider, a
10 public or private utility, any municipal corporation, city, town or other
11 political subdivision that is organized under state law and that generates,
12 transmits, distributes or otherwise provides natural gas, liquefied petroleum
13 gas, electricity or a combustible substance for a delivery system that is not
14 a retail-only facility, a telecommunications carrier or telephone company, a
15 municipal provider as defined in section 45-561, a law enforcement agency, a
16 public or private fire department or an emergency medical service provider.

17 (b) A structure or fenced yard or any equipment or apparatus that is
18 posted with signage indicating it is a felony to trespass or signage
19 indicating high voltage or high pressure and is used to manufacture, extract,
20 transport, distribute or store gas, including natural gas or liquefied
21 petroleum gas, oil, electricity, water or hazardous materials, unless it is a
22 retail-only facility.

23 2. "Enter or remain unlawfully" means an act of a person who enters or
24 remains on premises when the person's intent for so entering or remaining is
25 not licensed, authorized or otherwise privileged except when the entry is to
26 commit theft of merchandise displayed for sale during normal business hours,
27 when the premises are open to the public and when the person does not enter
28 any unauthorized areas of the premises.

29 3. "Entry" means the intrusion of any part of any instrument or any
30 part of a person's body inside the external boundaries of a structure or unit
31 of real property.

32 4. "Fenced commercial yard" means a unit of real property that is
33 surrounded completely by fences, walls, buildings or similar barriers, or any
34 combination of fences, walls, buildings or similar barriers, and that is used
35 primarily for business operations or where livestock, produce or other
36 commercial items are located.

37 5. "Fenced residential yard" means a unit of real property that
38 immediately surrounds or is adjacent to a residential structure and that is
39 enclosed by a fence, wall, building or similar barrier or any combination of
40 fences, walls, buildings or similar barriers.

41 6. "Fenced yard" means a unit of real property that is surrounded by
42 fences, walls, buildings or similar barriers or any combination of fences,
43 walls, buildings or similar barriers.

1 7. "In the course of committing" means any acts that are performed by
2 an intruder from the moment of entry to and including flight from the scene
3 of a crime.

4 8. "Manipulation key" means a key, device or instrument, other than a
5 key that is designed to operate a specific lock, that can be variably
6 positioned and manipulated in a vehicle keyway to operate a lock or cylinder,
7 including a wiggle key, jiggle key or rocker key.

8 9. "Master key" means a key that operates all the keyed locks or
9 cylinders in a similar type or group of locks.

10 10. "Nonresidential structure" means any structure other than a
11 residential structure AND INCLUDES A RETAIL ESTABLISHMENT.

12 11. "Residential structure" means any structure, movable or immovable,
13 permanent or temporary, that is adapted for both human residence and lodging
14 whether occupied or not.

15 12. "Structure" means any vending machine or any building, object,
16 vehicle, railroad car or place with sides and a floor that is separately
17 securable from any other structure attached to it and that is used for
18 lodging, business, transportation, recreation or storage.

19 13. "Vending machine" means a machine that dispenses merchandise or
20 service through the means of currency, coin, token, credit card or other
21 nonpersonal means of accepting payment for merchandise or service received.

22 Sec. 2. Section 13-1805, Arizona Revised Statutes, is amended to read:

23 13-1805. Shoplifting; detaining suspect; defense to wrongful
24 detention; civil action by merchant; public
25 services; classification

26 A. A person commits shoplifting if, while in an establishment in which
27 merchandise is displayed for sale, the person knowingly obtains such goods of
28 another with the intent to deprive that person of such goods by:

29 1. Removing any of the goods from the immediate display or from any
30 other place within the establishment without paying the purchase price; or

31 2. Charging the purchase price of the goods to a fictitious person or
32 any person without that person's authority; or

33 3. Paying less than the purchase price of the goods by some trick or
34 artifice such as altering, removing, substituting or otherwise disfiguring
35 any label, price tag or marking; or

36 4. Transferring the goods from one container to another; or

37 5. Concealment.

38 B. A person is presumed to have the necessary culpable mental state
39 pursuant to subsection A of this section if the person does either of the
40 following:

41 1. Knowingly conceals on himself or another person unpurchased
42 merchandise of any mercantile establishment while within the mercantile
43 establishment.

44 2. Uses an artifice, instrument, container, device or other article to
45 facilitate the shoplifting.

1 C. A merchant, or a merchant's agent or employee, with reasonable
2 cause, may detain on the premises in a reasonable manner and for a reasonable
3 time any person who is suspected of shoplifting as prescribed in subsection A
4 of this section for questioning or summoning a law enforcement officer.

5 D. Reasonable cause is a defense to a civil or criminal action against
6 a peace officer, a merchant or an agent or employee of the merchant for false
7 arrest, false or unlawful imprisonment or wrongful detention.

8 E. If a minor engages in conduct that violates subsection A of this
9 section, notwithstanding the fact that the minor may not be held responsible
10 because of the person's minority, any merchant who is injured by the
11 shoplifting of the minor may bring a civil action against the parent or legal
12 guardian of the minor under either section 12-661 or 12-692.

13 F. Any merchant who is injured by the shoplifting of an adult or
14 emancipated minor in violation of subsection A of this section may bring a
15 civil action against the adult or emancipated minor pursuant to section
16 12-691.

17 G. In imposing sentence on a person who is convicted of violating this
18 section, the court may require any person to perform public services
19 designated by the court in addition to or in lieu of any fine that the court
20 might impose.

21 H. Shoplifting property with a value of two thousand dollars or more,
22 shoplifting property during any continuing criminal episode or shoplifting
23 property if done to promote, further or assist any criminal street gang or
24 criminal syndicate is a class 5 felony. Shoplifting property with a value of
25 one thousand dollars or more but less than two thousand dollars is a class 6
26 felony. Shoplifting property valued at less than one thousand dollars is a
27 class 1 misdemeanor, unless the property is a firearm in which case the
28 shoplifting is a class 6 felony. For the purposes of this subsection,
29 "continuing criminal episode" means theft of property with a value of one
30 thousand five hundred dollars or more if committed during at least three
31 separate incidences within a period of ninety consecutive days ~~with the~~
32 ~~intent to resell the merchandise.~~

33 I. A person WHO IN THE COURSE OF SHOPLIFTING USES AN ARTIFICE,
34 INSTRUMENT, CONTAINER, DEVICE OR OTHER ARTICLE WITH THE INTENT TO FACILITATE
35 SHOPLIFTING OR who commits shoplifting and who has previously committed or
36 been convicted within the past five years of two or more offenses involving
37 burglary, shoplifting, robbery, ORGANIZED RETAIL THEFT or theft is guilty of
38 a class 4 felony.

39 Sec. 3. Title 13, chapter 18, Arizona Revised Statutes, is amended by
40 adding section 13-1819, to read:

41 13-1819. Organized retail theft; classification

42 A. A PERSON COMMITS ORGANIZED RETAIL THEFT IF THE PERSON ACTING ALONE
43 OR IN CONJUNCTION WITH ANOTHER PERSON DOES ANY OF THE FOLLOWING:

- 1 1. REMOVES MERCHANDISE FROM A RETAIL ESTABLISHMENT WITHOUT PAYING THE
- 2 PURCHASE PRICE WITH THE INTENT TO RESELL OR TRADE THE MERCHANDISE FOR MONEY
- 3 OR FOR OTHER VALUE.
- 4 2. USES AN ARTIFICE, INSTRUMENT, CONTAINER, DEVICE OR OTHER ARTICLE TO
- 5 FACILITATE THE REMOVAL OF MERCHANDISE FROM A RETAIL ESTABLISHMENT WITHOUT
- 6 PAYING THE PURCHASE PRICE.
- 7 B. ORGANIZED RETAIL THEFT IS A CLASS 4 FELONY.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.